

***Case No COMP/M.5558 -  
NUTRECO/ CARGILL***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 24/11/2009

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 24/11/2009

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PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying party**

Dear Sir/Madam,

**Subject: Case No COMP/M.5558 – NUTRECO/ CARGILL  
Notification of 19.10.2009 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 19.10.2009, the Commission received a notification of a proposed concentration by which Nutreco International, B.V. ("Nutreco", The Netherlands), a 100% subsidiary of Nutreco Holding N.V., acquires within the meaning of Article 3(1)(b) of the Council Regulation No 139/2004 (the "EC Merger Regulation") control of the animal nutrition business of the Cargill group in Spain and Portugal ("Cargill"), by way of purchase of assets. Nutreco and Cargill are jointly referred to as "the parties".

**I. THE PARTIES**

2. Nutreco is active in animal mixes, compound feed for animal nutrition, pet food, fish feed and specialty feed. Besides, in Spain, Nutreco is active in production and commercialisation of chicken meat<sup>2</sup> and also breeds and sells pigs to slaughterhouses. Through its Animal Feed Business Group, it produces and supplies compound feed, feed specialties and nutritional services.
3. The target comprises assets located in Spain and Portugal owned by Cargill S.L.U. and Cargill Portugal Comercio e Industria Agro-alimentar Sociedade Uniperssoal LDA, which form part of the Cargill group whose ultimate parent entity is Cargill Incorporated. Cargill is active in production and sale of compound feed for livestock (excluding fish feed) and

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1.

<sup>2</sup> As regards to poultry, Nutreco is not present in the production of turkey meat.

production and sale of industrial or prepared dry pet food in Spain and Portugal as well as complementary services related to the sale and purchase of livestock in Spain.

## **II. THE OPERATION AND THE CONCENTRATION**

4. The proposed concentration concerns the acquisition by Nutreco of Cargill's animal nutrition businesses in Spain and Portugal. A Sale and Purchase Agreement was signed by the parties on 28 July 2009. As a result of the transaction, Nutreco will acquire sole control over Cargill within the meaning of Article 3(1)(b) of the EC Merger Regulation.

## **III. COMMUNITY DIMENSION**

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> (Nutreco, EUR [...] million and Cargill, EUR [...] million). Each of them has a Community-wide turnover in excess of EUR 250 million (Nutreco, EUR [...] million and Cargill, EUR [...] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **IV. RELEVANT MARKETS**

6. The parties' activities overlap in the production and supply of compound feed for animal nutrition in Spain and Portugal. In the Spanish market there is also a vertical link between Nutreco's poultry meat production and Cargill's compound feed activities.<sup>4</sup>

### **a) Horizontal issues**

#### *Animal compound feed*

7. In line with previous Commission decisions<sup>5</sup>, the notifying party submits that there is a single market for animal compound feed for all types of animals (with the exception of fish feed and pet food<sup>6</sup>), given the existence of significant demand side and supply-side substitutability between all types of animal feed.
8. As to the geographic market definition, the notifying party submits, in line with the Commission's previous practice<sup>7</sup>, that the market is likely to be at least national in scope as suppliers compete on a national basis through supply points and demand is strongly influenced by national demand characteristics.

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation.

<sup>4</sup> The Commission notes that a potential vertical link exists between Cargill's compound feed activities and Nutreco's raising of pigs for slaughtering activities although for this particular transaction this link does not lead to a vertically affected market.

<sup>5</sup> See COMP/M.5410 Forfarmers/Cefetra, COMP/M. 4617- Nutreco/Basf, COMP/M.2956 CVC/PAI Europe/Provimi and COMP/M.2271 Cargill/Agribands. In 2008, Nutreco's market share in volume terms was [0-5%].

<sup>6</sup> Pet food is assessed below in a separate section.

<sup>7</sup> *Ibid.*

9. However, for the purpose of this case it not necessary to exactly delineate the geographic market as the proposed transaction is unlikely to give rise to serious doubts under any possible alternative market definition.

*Pet food*

10. The notifying party submits, in line with previous Commission practice, that pet food constitutes a separate relevant market.<sup>8</sup> The Commission in its previous practice has considered that industrial (or prepared) dry cat food, wet cat food, dry dog food and industrial (or prepared) wet dog food constituted separate relevant product markets<sup>9</sup>. The Commission has further considered that branded and private label products constitute separate product markets at the wholesale level.<sup>10</sup> In addition, the Commission has also considered that industrial pet food and fresh pet food constitute separate relevant product markets<sup>11</sup>. As to the geographic market, in accordance with previous Commission practice, the notifying party considers the market to be at least national in scope.
11. However, the exact product and geographic dimension of the pet food market can be left open, since the transaction does not raise any serious doubts irrespective of any possible alternative market definition.

**b) Vertical issues**

*Animal feed mixes (upstream)*

12. The notifying party submits that the relevant product market upstream of the compound feed market includes at least premixes and basemixes. Previously, while leaving the market definition open, the Commission found a certain degree of supply and demand side substitutability between premixes and basemixes<sup>12</sup>. The Commission further pointed at possible separate markets for mixes for pet food.
13. Geographically, the notifying party submits that the scope of the market is at least EEA-wide. The Commission, while leaving the market definition open, previously found that the market might be national in scope.
14. For the purpose of this transaction, the market definition for animal feed mixes can be left open as no serious doubts arise irrespective of the market definition.

*Fresh and processed poultry meat (downstream)*

15. The notifying party submits that the supply of fresh poultry meat and of processed poultry meat constitute separate product markets. In previous decisions the Commission has

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<sup>8</sup> See COMP/M.4617- Nutreco/Basf.

<sup>9</sup> See COMP/M.2544 Masterfoods/Royal Canin.

<sup>10</sup> See COMP/M.2337 Nestle/Ralston Purina.

<sup>11</sup> See Case IV/M.554 – Dalgety PLC/ The Quaker Oats Company.

<sup>12</sup> See COMP/M.4617 Nutreco/Basf, COMP/M.3177 Basf/Glon-Sanders/JV and COMP/M.2956 CVC/PAI Europe/Provimi.

considered that the supply of fresh chicken is upstream to the supply of processed chicken.<sup>13</sup>

16. As regards the market for the supply of fresh poultry meat, the Commission envisaged in past decisions<sup>14</sup> to further distinguish separate markets for (i) chicken meat, (ii) turkey meat and (iii) boneless chicken breast meat, although ultimately leaving this question open. Within the markets for fresh meat, the Commission also considered the possibility to identify separate markets based on the customer type: (i) retail market (supermarkets, butchers, farm sales, etc)<sup>15</sup>, (ii) sales to caterers and (iii) sales to industrial processors<sup>16</sup>.
17. As to the supply of processed poultry meat, the Commission previously discussed whether these markets could be divided further into several sub-markets for typical meat products like raw cured products, canned meat, ready prepared dishes and component for such (convenience products)<sup>17</sup>, cooked sausages, pâté and pies<sup>18</sup> and processed meat for cold consumption<sup>19</sup> but ultimately left open whether such a detailed sub-segmentation was adequate<sup>20</sup>. The Commission has also considered that the processed meat market can be subdivided on the basis of type of customer distinguishing separate markets for retailers and caterers although it finally left the question open<sup>21</sup>.
18. As regards the geographic scope, the Commission has in recent decisions left open the question whether the market for the supply of fresh poultry meat is national or wider than national.<sup>22</sup> As to the supply of processed poultry meat, the Commission has considered national markets but has ultimately left open the exact market definition<sup>23</sup>.
19. However, the precise market definition for fresh and processed poultry meat can be left open as the assessment of the current transaction would remain unchanged irrespective of the market definition used.

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<sup>13</sup> See COMP/M.5322 Marfrig/OSI Group Companies.

<sup>14</sup> *Ibid.*

<sup>15</sup> See COMP/M.5204 Vion/Grampian.

<sup>16</sup> See COMP/M.3337 Best Agrifund/Nordfleisch, M COMP/M.3968 Sovion/ Südfleisch.

<sup>17</sup> See COMP/M.1313 Danish Crown/Vestjyske Slagterier.

<sup>18</sup> See COMP/M.3401 Danish Crown/Flagships Foods, COMP/M.3337 Best Agrifund/ Nordfleisch and COMP/M.4257 Smithfield/Oaktreee/Sara Lee Foods Europe.

<sup>19</sup> See COMP/M.1313 Danish Crown/Vestjyske Slagterier.

<sup>20</sup> See COMP/M.3337 Best Agrifund/Nordfleisch, COMP/M.3605 Sovion/HMG and COMP/M.4257 Smithfield/Oaktreee/Sara Lee Foods Europe.

<sup>21</sup> See COMP/M.3401 Danish Crown/Flagship Foods.

<sup>22</sup> See COMP/M.5322 Mafrig/OSI Group Companies and COMP/M.4257 Smithfield/Oaktreee/Sara Lee Foods Europe.

<sup>23</sup> See COMP/M.5410 Forfarmers/Cefetra; COMP/M.3337 Best Agrifund/Nordfleisch.

## V. COMPETITIVE ASSESSMENT

### a) Horizontal issues

#### *Animal compound feed*

20. For the compound feed market, the notifying party provided estimations of the total size of the animal compound feed market on the basis of three sources: Eurostat, Cesfac<sup>24</sup> and the notifying party's own estimates<sup>25</sup>. According to the parties, sales in volume are the relevant figures used in the animal compound feed business. The market shares reported by the parties on the basis of these three alternative data sources do not differ significantly. The notifying party considers that an appropriate and reliable source for the market share calculation is Eurostat product statistics.<sup>26</sup>
21. More important differences arise from the adjustment necessary to estimate the size of the market. For the purpose of calculating the market shares, at the request of the Commission, the notifying parties have excluded internal sales of compound feed within companies of the same group. The parties have estimated that such a commercial market (excluding internal sales) for compound feed represents 66% of the total market<sup>27</sup>.
22. The market shares estimates provided by the parties excluding internal sales and using Eurostat data<sup>28</sup> and applying the estimate that the market excluding internal sales represents only 66% of the total market are presented in Table 1 below.

**Table 1: Market share in compound feed in 2008 (volume)**

	NUTRECO(*) %	Target assets %	Combined %
Spain	[5-10%]	[0-5%]	[10-20%]
Portugal	[0-5%]	[0-5%]	[5-10%]

(\*) In Spain, in animal compound feed, Nutreco operates under the commercial name of Nanta.

Source: EUROSTAT

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<sup>24</sup> *Confederación Española de Fabricantes de Alimentos.*

<sup>25</sup> Production figures of compound feed have been corrected for internal consumption in order to arrive to total sales in the open market. These corrected production figures have been used by the parties to estimate the market shares provided in the notification. The parties consider that cooperatives exercise a competitive pressure on the compound feed market since they have the capacity and incentives to sell their products to third parties and its members can also buy compound feed from third parties. Therefore, the parties have treated compound feed sales of cooperatives as third parties sales.

<sup>26</sup> "Prodcom – Statistics by product" database of Eurostat and in particular the data covering sold volume which excludes home-mixing (i.e. feed produced by farmers using own feed stuff that they mix with purchased pre-mixes).

<sup>27</sup> The parties have calculated the proportion internal sales represent in the total market volume on the basis of company information extracted from the DBK study on compound feed of December 2008 which includes 33 individual companies representing 13.6 million tons of compound feed. Taken as a whole, for this group of companies, 34% of production constitutes internal sales and 66% represents sales to third parties (commercial market). These 33 companies include the largest poultry and pork integrators in Spain. The parties have also offered calculations under an alternative scenario which considers internal sales to represent 30% of the total market.

<sup>28</sup> The estimated market shares provided by the parties are the largest when employing this data source.

23. In Spain, where the horizontal overlap between the parties is the largest, the parties submit that other competitors will remain present in the compound feed market. According to the parties, Vall Companys, Guissona, Nuter and Grupo Coren, will remain present with production shares exceeding 5%<sup>29</sup>. In Portugal, the market investigation signalled Valouro, Provimi and Saprogal as relevant market players in compound feed each with production shares exceeding 5%.<sup>30</sup> The parties have not been able to provide market shares for their competitors in the non captive market.
24. A third party study provided in the market investigation<sup>31</sup> indicates that the animal feed market measured by production appears to be quite fragmented in Spain<sup>32</sup>. The study shows that besides Nutreco and Cargill, the four companies mentioned in point 23 above have animal feed production above 700,000 tons and represent about 30% to 35% of the production of animal feed. The study also identifies 16 companies with production between 200,000 and 700,000 tons and 30 companies with production between 100,000 and 200,000 tons.
25. The Commission market investigation confirmed the competitors' production shares in compound feed and the possibility for customers to easily and relatively quickly change compound feed suppliers<sup>33</sup>. The Commission notes that, given the low combined market shares of the parties in the compound feed market, as confirmed by the market investigation, the proposed transaction is unlikely to lead to any serious doubts in the market for animal compound feed, or in any specific submarket within animal compound feed, in Spain, Portugal or the EEA-wide market.

#### *Pet food*

26. According to the data provided by the parties, the transaction leads to a minor horizontal overlap in pet food. Considering the narrowest possible market, that is a separate product market for pet food branded products at wholesale level –the combined market share of the parties would not exceed [5-10%] in Spain and [0-5%] in Portugal. Therefore, the transaction as regards to pet food does not give rise to serious doubts as to its compatibility with the common market irrespective of the product and geographic market definition.

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<sup>29</sup> The estimates for competitors in animal compound feed provided by the parties include both production for auto consumption and sales to third parties.

<sup>30</sup> It is noted that some of the competitors in the compound feed market keep all or a significant part of their compound feed production captive for internal consumption within the group for their vertically integrated activities.

<sup>31</sup> *Estudio de Posicionamiento Estratégico para el Sector de Alimentación Animal en el Escenario Actual*. 2008. Ministerio de Medio Ambiente y Medio Rural y Marino, CESFAC, Interat. 2008

<sup>32</sup> According to the industrial survey of the Spanish Statistical Office it counted with 781 companies in 2006, 78% of which with less than 20 employees.

<sup>33</sup> The majority of the respondents to the market investigation indicated having no significant concerns with regard to the effects of the transaction in the compound feed market.

## b) Vertical issues

### *Animal feed mixes (premixes and basemixes)*

27. The animal mixes market is an upstream market to the compound feed market. Only Nutreco is present in this market. Considering any of the possible market segmentations in Spain, Portugal and the EEA, Nutreco's market share according to the notifying party will be the highest, [20-30%] in volume terms in 2008, in the market for premixes in Spain<sup>34</sup> (Nutreco's market share in premixes in Portugal was [10-20%]). The market share under the narrowest possible market for pet food mixes in Spain was [5-10%]. The ability of the parties to engage in input or customer foreclosure strategies is unlikely due to Nutreco's rather limited market share in the upstream animal feed mixes market and the existence of other important competitors in animal mixes such as DSM ([20-30%] market share), Setna ([10-20%] market share) or Provimi ([5-10%] market share), as well as due to the limited market share of Cargill in the downstream compound feed market. Therefore, the proposed transaction does not raise serious doubts as to its compatibility with the common market as regards the vertical relationship with animal mixes.

### *Fresh and processed poultry meat*

28. Fresh poultry meat is a downstream market to the compound feed market. Furthermore, the Commission notes that processed poultry meat is a downstream market to the supply of fresh poultry meat. In this context, the notifying party submits that since the target is not active in the raising of poultry for the slaughtering market, which is directly downstream from the compound feed market there is not any vertical link to the market for livestock slaughter and the market for the supply of poultry meat. However, it should be noted that a commercial link exists between the upstream compound feed market and the downstream market of poultry meat given the strong influence of the notifying party on the whole supply chain which goes from the animal feed to the supply of fresh and processed poultry meat. Furthermore, this model of vertical integration is followed by many of the companies in the compound feed market. The Commission notes that concerning the poultry market in Spain, Nutreco is only present in the production and commercialisation of chicken meat.

29. In the market of fresh chicken meat supply, according to the parties' estimates<sup>35</sup>, Nutreco's market share<sup>36</sup> would not exceed [20-30%] in Spain. In 2008, the highest market share of Nutreco would be [20-30%] under the narrowest market definition considered, namely the market for the supply of fresh chicken meat to retail markets<sup>37</sup>. Other competitors in the market for supply of fresh chicken meat with market shares exceeding 5% include Vall Companys, Grupo Coren, Padesa and Uvesa. As to the indirect vertical relationship between fresh and processed chicken meat, the Commission notes that according to the parties' estimates, Nutreco's market share in the supply of processed chicken was [0-5%]. Considering a further division of the supply of processed chicken meat, Nutreco's market share in the supply of processed chicken meat to retailers was [0-5%] while in the supply of

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<sup>34</sup> Only exception is pet food mixes in the EEA in which Nutreco holds a [20-30%] market share.

<sup>35</sup> Based on data from the third party study "*Observatorio sobre el Consumo de Carne de Pollo en los Distintos Canales*". Instituto Markin and Ministerio de Medio Ambiente, Medio Rural y Marino. Octubre 2008

<sup>36</sup> In poultry meat, Nutreco operates under the commercial name of Sada in Spain.

<sup>37</sup> For completeness and according to the parties' best estimates, Nutreco's market share in supply of fresh chicken meat to industrial processors is below [20-30%].



processed chicken meat to caterers was [0-5%]. The market investigation was not conclusive concerning the market shares supplied concerning fresh and processed chicken meat. However, the market shares supplied are broadly in line with those provided by competitors in the market investigation. The majority of the respondents to the market investigation indicated that the transaction will have no significant impact on the poultry meat market.

30. Given Nutreco's rather limited market share in the fresh and processed chicken meat markets, the existence of alternative suppliers of fresh and processed chicken meat and the low combined market share of the parties in compound feed, the parties will lack the ability to engage in any foreclosure strategy.
31. On the basis of this information, the Commission finds that the notified concentration does not raise serious doubts as to its compatibility with the common market.

## **VI. CONCLUSION**

32. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EC) No 139/2004.

For the Commission  
(signed)  
Neelie KROES  
Member of the Commission